PETITIONER:
ION EXCHANGE (INDIA) LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, BARODA.

DATE OF JUDGMENT: 02/08/1999

BENCH:
K. VENKATASWAMI. & M.JAGANNADHA RAO,J.

JUDGMENT:

M. JAGANNADHA RAO, J.

The appellant in these two appeals is the same and the issues arising in both appeals are also the same. Civil Appeal No. 2110 of 1988 is filed against the order of the CEGAT(Delhi) dated 2.2.1988 while Civil Appeal No. 2006 of 1997 is filed against the order of the CEGAT(Delhi) dated 27.2. 1992. In Civil Appeal No. 2110 of 1988, the facts are as follows:

The appellant manufactures Ion-Exchanges and an intermediate product called D.V.B. beads is consumed in the course of the manufacture of the Ion Exchanges.

The dispute was confined to the question as to whether excise duty was leviable on the intermediate product. Three points arose before the CEGAT. The first was in relation to whether the said intermediate products were goods which were marketable, the second was whether they fell within the classification in the relevant tariff item No.15A(1)(ii) and the third related to limitation. On the third point, all the three members were agreed that the demand for duty could not exceed six months preceding the show cause notice. But on the first and second points there was difference of opinion. One of the members Sri V.P.Gulati held that the disputed goods were distinct items as compared to the end product and that they were marketable goods inasmuch as the affidavits produced by the appellant to the contrary were not acceptable. He also held that unless the goods were proved by the Revenue to be plastic materials or resins, they could not be brought under item no. 15A(1)(ii) and the matter required a remand to the Collector(Appeals) on that question. The other two members (Sri S.D.Jha and Sri Harish Chander) observed that they had some reservations as to the evidence produced by the appellant to prove that the beads were not marketable. On the question of marketability, they held that once these beads fell in the entry 15A(1)(ii), their marketability was to be treated

as no longer in question. As to the OA classification, they felt no remand was necessary. The intermediate product squarely fell within entry 15A(1)(ii). They therefore dismissed the appeal subject however to the slight modification as to the period of limitation on which point they were in agreement with Sri V.P.Gulati. Against the dismissal of the appeal in the manner as stated above, the appellant has preferred this appeal.

In the connected Civil Appeal No.2006 of 1997, the position was that the appellant contended before the CEGAT that tariff item No.15A(1)(ii) was not applicable and also that the first appellate authority had not gone into the marketability of the intermediate product as the said authority did not notice the evidence produced by the appellant. Even so, the Tribunal felt that its judgment dated 2.2.1988 (which is under appeal in Civil Appeal No. 2110 of 1988) was in point and covered the case against the appellant. (No question of limitation arose in this case). Following that judgment, the appeal was dismissed.

In these appeals, we have heard the learned senior counsel for the appellant Sri Joseph Vellapally and the learned counsel for the department, Sri M.Gaurishankar Murthy.

We are of the opinion that in view of the judgments of this Court in Moti Laminates Pvt. Ltd. & Others versus Collector of Central Excise, Ahmedabad [1995 (3) SCC 23] which has been re-affirmed in Union of India & Another versus Delhi Cloth & General Mills co. Ltd. & Another [1997 (5) SCC 767], the reasoning of the majority Members that specification in the tariff is proof of marketability, cannot be accepted. The evidence as to marketability that the Revenue may produce is, in our opinion, to be separately gone into in conjunction with other evidence that is produced by the assessee. In the present case, the two members who have gone merely by the specification, have not gone into the evidence produced by the parties on the question of marketability. Hence on that question, the matter has to be remitted to the Tribunal. On the other question relating to whether the intermediate product falls within the tariff item 15A(1)(ii) or not, one of the members has directed a remand while the reasoning given by the other two members is rather cryptic and not elaborate. We, therefore, think that even on this point as to whether the beads fall within tariff entry 15A(1)(ii), the matters have to be remitted to the Tribunal.

We, accordingly, set aside the judgments of the Tribunal in both cases and remit the matters to the Tribunal both on the question as to marketability of the intermediate products and also on the question whether they fall within tariff item 15A(1)(ii). So far as the question of limitation in Civil Appeal No. 2110 of 1988 is concerned, the unanimous finding of the CEGAT shall

stand confirmed. The appeals are allowed as stated above. There will be no order as to costs.